

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 CASE NO. 08-01789-smb

4 - - - - - x

5 SECURITIES INVESTOR PROTECTION

6 CORPORATION

7 v.

8 BERNARD L. MADOFF INVESTMENT

9 SECURITIES, LLC, et al,

10 Debtors.

11 - - - - - x

12

13 U.S. Bankruptcy Court

14 One Bowling Green

15 New York, New York

16

17 April 18, 2017

18 2:05 PM

19

20

21 B E F O R E :

22 HON. STUART M. BERNSTEIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: Unidentified

1 Trustee's Motion in Limine Excluding Certain Testimony from
2 the Blums

3
4 Trustee's Motion in Limine Excluding Testimony of Aaron
5 Blecker

6
7 Trustee's Motion in Limine Excluding Himself as Witness

8
9 Participating Claimants' Motions in Limine Precluding
10 Experts Greenblatt and Collura

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25 Transcribed by: Sherri L. Breach, CERT*D-397

1 A P P E A R A N C E S :

2 BAKER & HOSTETLER, LLP

3 Attorneys for BLMIS, Trustee

4 45 Rockefeller Plaza

5 New York, NY 10111

6

7 BY: AMY E. VANDERWAL, ESQ.

8 LAN HOANG, ESQ.

9 AMANDA E. FEIN, ESQ.

10

11 BAKER & HOSTETLER, LLP

12 Attorneys for BLMIS, Trustee

13 Capitol Square, Suite 2100

14 65 east State Street

15 Columbus, Ohio 43215

16

17 BY: CATHERINE E. WOLTERING, ESQ.

18

19 SECURITIES INVESTOR PROTECTION CORPORATION

20 For SiPC

21 1667 K Street, N.W.

22 Suite 1000

23 Washington, DC 20006

24

25 BY: KEVIN H. BELL, ESQ.

1 BAKER & MCKENZIE, LLP

2 Attorneys for Dr. Joel Blum & Dr. Norman Blum

3 815 Connecticut Avenue, NW

4 Washington, DC 20006

5
6 BY: RICHARD A. KIRBY, ESQ.

7 GRAHAM R. CRONOGUE, ESQ.

8 LAURA CLINTON, ESQ.

9
10 CHAITMAN, LLP

11 Attorneys for Unspecified

12 465 Park Avenue

13 New York, New York 10022

14
15 BY: HELEN DAVIS CHAITMAN, ESQ.

1 P R O C E E D I N G S

2 THE COURT: Madoff.

3 MS. VANDERWAL: Good afternoon, Your Honor.

4 THE COURT: Good afternoon.

5 MS. VANDERWAL: Amy Vanderwal of Baker Hostetler
6 for the Madoff trustee.

7 As you're aware we're here today before you on
8 several in limine motions as part of the proper withdrawal
9 proceedings. The parties have conferred, and subject to any
10 preference the Court we have, we agree to an order of
11 argument for the motions. They were -- it was sent in the
12 notice of agenda that was filed yesterday.

13 Before we begin with Norman and Joel Blum's motion
14 there is just one initial issue to raise now because it
15 comes up in --

16 THE COURT: Yeah. Can you --

17 MS. VANDERWAL: -- a bunch --

18 THE COURT: -- keep your voice up? It's very --

19 MS. VANDERWAL: Sure.

20 THE COURT: It's very noisy outside.

21 MS. VANDERWAL: It comes up in a bunch of the
22 motions so I thought I would just touch briefly now on the
23 scope of the proceedings when we get to trial.

24 THE COURT: Maybe we should talk about that first.

25 MS. VANDERWAL: That's what I was suggesting.

1 The way that it had originally been anticipated,
2 as I think Your Honor is aware, it was an omnibus
3 proceeding, much like the inter account transfer omnibus
4 proceeding where the participating claimants opted in to
5 resolve the specific issue of whether the proper withdrawal
6 transactions on customer statements were properly treated as
7 debts. And then once the omnibus issues was resolved the
8 claimants, like in inter account transfers, could raise any
9 specific issues they had and we would work on resolving
10 those on sort of an individual level.

11 Through the course of the briefing it seems some
12 of the participating claimants, that they're more focused on
13 whether they received the particular checks as opposed to or
14 in addition to the omnibus issue. And though it wasn't
15 originally contemplated, if the Court was so inclined we
16 would be fine with for after the omnibus portion of the
17 trial resolving the claims of -- the objections to claims
18 determination of Mr. Blecker and the Blums.

19 There are, of course, fifty other participating
20 claimants represented by Ms. Chaitman and we haven't engaged
21 in any discovery with them so we wouldn't be in a position
22 to deal with those claimants. But if that was something
23 that the Court was inclined to do and participating
24 claimants were interested in, the trustee has no problem
25 with that.

1 THE COURT: That's fine with me. It will save you
2 another trip, I suppose.

3 Mr. Kirby.

4 MR. KIRBY: Yes, Your Honor. Richard Kirby on
5 behalf of the Drs. Joel and Norman Blum.

6 I'm troubled for the trust -- that the trustee
7 raises this issue now. And the reason is, is that the so-
8 called omnibus proceedings have been going on for now more
9 than two years. There was a very specific order entered by
10 the Court in June that set up a process by which the
11 documentation would be presented and parties would opt in or
12 opt out.

13 At this point having opted in, complied with the
14 very strict rules about production and so forth, we view
15 that the proceeding at this juncture relates to those people
16 who have opted in, complied with the discovery obligations
17 that have been imposed on us by the Court. We've engaged in
18 the extensive discovery including the extended discovery
19 that the Court authorized with respect to the employee
20 claims.

21 And at this point we think it's ripe for our
22 clients' motions to be heard. What we --

23 THE COURT: Well, how is that different from what
24 the trustee just said?

25 MR. KIRBY: Well, the -- it's different only in

1 this respect. What evidence the trustee puts -- chooses to
2 put on in some other proceeding relating to what they
3 perceive is their necessity to deal with claims that are not
4 the ones that are before the Court, we don't -- that's not
5 our problem. That's not our issue. And we would just as
6 soon have the proceedings that relate to our clients
7 narrowed to just the ones that are really at issue.

8 THE COURT: Is it --

9 MR. KIRBY: I don't want to have --

10 THE COURT: Is this your argument that the trustee
11 can't rely upon what is essentially information relating to
12 profit withdrawal and corresponding disbursement records as
13 to other claimants in your case?

14 MR. KIRBY: Yes.

15 THE COURT: Okay. I disagree with that.

16 MR. KIRBY: Okay. Then I'll --

17 THE COURT: And let me explain why.

18 MR. KIRBY: Yeah.

19 THE COURT: This is essentially a statistical
20 case, and subject to being educated my understanding of what
21 the trustee is arguing is that in a, I don't want to say
22 small or relatively small percentage of later cases or later
23 transactions there is a high correlation between the profit
24 withdrawal noted on the customer statements, I guess, or the
25 trustee's books and records and actual corresponding

1 evidence of disbursements.

2 And then the trustee is asking me, as the fact
3 finder, to extrapolate backwards, if that's the right
4 phrase, and conclude or infer from that that even when there
5 are no corresponding records that the PW still stands for a
6 disbursement. And I don't know how the trustee proves that
7 except statistically.

8 MR. KIRBY: Okay. That would be great if they had
9 offered a statistician to support that claim.

10 THE COURT: Well, the -- I -- I think one of your
11 arguments, and I agree with it, is I would not permit -- and
12 maybe we're getting ahead of ourselves.

13 MR. KIRBY: Yeah.

14 THE COURT: I wouldn't accept testimony from Ms.
15 Collura or Mr. Greenblatt that it's reasonable to infer that
16 the records that are missing would prove the trustee's case.
17 It seems to me that's an inference I have to draw from the
18 evidence. They can tell me on how many instances the PW
19 notation matched the disbursement, what the universe of PW's
20 are and, you know, whatever other relative -- evidence may
21 be relevant to that determination. And then I will either
22 draw or not draw the inference that the trustee is asking me
23 to draw.

24 MR. KIRBY: As the finder of fact I agree.

25 THE COURT: Right.

1 MR. KIRBY: Okay.

2 THE COURT: But I can't do that in your client's
3 case without hearing all of this -- you know, the universe
4 of evidence.

5 MR. KIRBY: I understand. But I want to make sure
6 that the Court appreciates that the very relevance of that
7 issue to our clients is an issue that we -- is one aspect of
8 our motion and we intend -- I would like to address that at
9 the -- today because I think there is -- there's a singular
10 fallacy in the even -- the very concept of what the
11 trustee's doing, but I think it is worth going through the
12 evidentiary issues to sort of parse that out.

13 And so with the Court's permission, unless you
14 want to hear further from the trustee, I would like to
15 address these evidentiary issues.

16 THE COURT: What --

17 MS. VANDERWAL: The only thing I would briefly
18 add, Your Honor, and I will be brief, is that if -- we're
19 not merely asking this Court -- and you'll hear more of this
20 as we go on to extrapolate. There are books and records in
21 the debtors possession that suggest for these claimants they
22 did receive PW transactions.

23 So it's a combination of the actual records that
24 relate to the (indiscernible) claimants and other records
25 from a later time period where they're not -- they

1 reconciled the third party claims.

2 THE COURT: Well, whatever -- whatever the
3 trustee's records are, my recollection is that for all of
4 the PW transactions before 1998, I think, there are no
5 corresponding disbursement records because you just don't
6 have the records. It's not that there are contradictory
7 records. There are just no records. And --

8 MS. VANDERWAL: That's correct.

9 THE COURT: -- you're asking me to conclude,
10 because the records match after that period, more or less,
11 that I should also conclude that if we had the records they
12 would confirm it all, or basically that the PW transactions
13 were actual disbursements. That's really what this is
14 about, right?

15 MS. VANDERWAL: That's correct.

16 THE COURT: And let me just say at the end of this
17 proceeding, assuming I agree with the trustee, all it's
18 going to mean is that I will infer that subject to hearing,
19 you know, credit -- claimants get up and say, well, I never
20 got a check and there -- you know, and that kind of
21 evidence.

22 MS. VANDERWAL: And I just want to bring you to
23 one other thing which is the burden of proof, which is
24 something that we've talked about --

25 THE COURT: Right.

1 MS. VANDERWAL: -- at various instances and here,
2 as Your Honor is aware, in a civil proceeding the burden of
3 proof to prove their claim is on the claimant.

4 THE COURT: Right.

5 MS. VANDERWAL: Which means from the beginning,
6 you know, they file their claim. They need to file
7 documentation to support it. The trustee or in this case
8 because of its complexity the trustee's experts review the
9 book and -- books and records to see if what's on the claim
10 corresponds to those books and records and then denies,
11 allows or allows in part the claim. And then to the extent
12 that the claimant wishes to object it's their obligation to
13 come forth with evidence as to why --

14 THE COURT: Right.

15 MS. VANDERWAL: -- the books and records --

16 THE COURT: But the --

17 MS. VANDERWAL: -- were incorrect.

18 THE COURT: But like you take someone like Mr.
19 Blecker and he's going to say, I never got the checks. What
20 more does he have to do?

21 MS. VANDERWAL: Well, a self-serving statement
22 alone isn't sufficient --

23 THE COURT: Why not?

24 MS. VANDERWAL: -- to satisfy the burden without
25 any kind of documentation to support --

1 THE COURT: Well, how is he support to document
2 that he never go the checks?

3 MS. VANDERWAL: Well, he could provide -- I mean,
4 he could provide bank records. He could provide --

5 THE COURT: You could provide --

6 MS. VANDERWAL: -- tax records.

7 THE COURT: -- bank records showing that he got
8 the checks.

9 MS. VANDERWAL: He could, you know --

10 THE COURT: Nobody keeps 20 year old bank records.
11 And, you know, that's a question we'll get to at trial.

12 MS. VANDERWAL: Okay.

13 THE COURT: I just --

14 MS. VANDERWAL: That's fair.

15 THE COURT: You know, they're going to get up and
16 say they didn't get it and I don't know what more they have
17 to say. I may or may not believe it, and I've express
18 reservations in Mr. Blecker's case in the past about the
19 credibility of that statement. But --

20 MS. VANDERWAL: I think you'll hear
21 (indiscernible) as we move on. But I --

22 THE COURT: Yeah.

23 MS. VANDERWAL: -- there is SIPA case law
24 suggesting that a self-serving statement isn't sufficient to
25 carry the burden in a SIPA case. But --

1 THE COURT: Of a non-fact?

2 MS. VANDERWAL: -- we can --

3 THE COURT: How do you prove a non-fact?

4 MS. VANDERWAL: We can (indiscernible) through
5 that later. Well, if -- you know, if they had bank records
6 for the relevant period, if they had sought to obtain bank
7 records --

8 THE COURT: How would you prove a non-fact with
9 bank records, the absence of an entry? All right. Why
10 don't we start with the motions?

11 MS. CHAITMAN: May I just make one comment?

12 THE COURT: Yes.

13 MS. CHAITMAN: Helen Chaitman on behalf of the --

14 THE COURT: You have to speak into the microphone.

15 MS. CHAITMAN: Helen Chaitman on behalf of a
16 number of the claimants, but nominally Mr. Blecker.

17 THE COURT: Please keep your voice up.

18 MS. CHAITMAN: You -- I think you made one
19 mistake, Your Honor, and I just wanted to --

20 THE COURT: Only one?

21 MS. CHAITMAN: Only one.

22 THE COURT: We've only been out here five minutes,
23 so.

24 MS. CHAITMAN: I know. I just want to clarify it.

25 THE COURT: Right.

1 MS. CHAITMAN: You said that there's no
2 documentary evidence proving that anyone got the checks, and
3 that isn't true because there is documentary evidence based
4 on the depositions we've taken of the former Madoff
5 employees. And that Bonjourno (ph) testified that every
6 check that was sent for a profit withdrawal --

7 THE COURT: I don't want to hear the evidence now.

8 MS. CHAITMAN: Okay.

9 THE COURT: My recollection from the -- reading
10 the expert affidavits is there is a high correlation in the
11 post-2000 -- post-1998 Euro between a PW notation and an
12 actual evidence of disbursement.

13 MS. CHAITMAN: There was no PW entry after 1998.
14 It doesn't exist. What the experts have --

15 THE COURT: I can tell --

16 MS. CHAITMAN: -- done is --

17 THE COURT: I thought they went beyond that.

18 MS. CHAITMAN: No. No. What the experts have
19 done is taken journal entries --

20 THE COURT: I -- please. Let --

21 MS. CHAITMAN: Okay.

22 THE COURT: Let's just do this in order because if
23 everybody stands up --

24 MS. CHAITMAN: Okay.

25 THE COURT: -- and argues their own claim it's not

1 going to work.

2 Mr. Kirby, you have the floor.

3 MR. KIRBY: Okay.

4 Your Honor, on the issue of burden of proof I
5 would like to say that it is our position and we've set this
6 forth in our papers on the merits that the burden of proof
7 is at this juncture, once the -- we -- I will respect the
8 Court's decision that says that once the trustee has made
9 the decision the burden is on our clients to come forward
10 with some evidence to overcome the presumption for which the
11 trustee is entitled.

12 Once they've come forward instead we did not
13 receive the checks and they have firsthand knowledge of
14 that. That is sufficient. And my understanding of then the
15 question is for the Court to decide the knowable of that
16 issue. And my understanding is, is that SiPC itself agrees
17 that that's the appropriate role.

18 Now what we're dealing with is a proceeding where
19 the trustee offers documentation from Madoff's what they
20 have termed fabricated files on which he relies to reduce
21 the amount of our client's valid (indiscernible) claims for
22 which they've submitted the necessary SiPC claim
23 documentation.

24 And our basic position is, is that the Court
25 should not permit the trustee to rely on this type of

1 evidence. And we've asked the Court to exclude it for three
2 reasons.

3 First, to exclude statements -- documents relating
4 to parties that are not parties to the case, and we were
5 just talking about this and I want to spend a little time
6 with that, but I just want to outline our basic position.

7 The second thing is, is to exclude hearsay
8 statements. And there isn't any question that this so-
9 called PW entry is hearsay.

10 THE COURT: Well, all the books and records are
11 hearsay.

12 MR. KIRBY: Of course.

13 THE COURT: But the trustee is supposed to
14 determine net equity claims in accordance with the books and
15 records and any other satisfactory (indiscernible). So
16 doesn't the trustee have to look at the books and records?

17 MR. KIRBY: He does have to look at the books and
18 records. But what the trustee has steadfastly stated since
19 the beginning of this case is the books and records are
20 unreliable.

21 THE COURT: That's true in all fraud cases,
22 though.

23 MR. KIRBY: Pardon.

24 THE COURT: It's true in all fraud cases and
25 that's why --

1 MR. KIRBY: Yes. But then --

2 THE COURT: -- you hire a forensic accountant.

3 MR. KIRBY: So then -- yeah, but what does a
4 forensic accountant do? He verifies the existence of these
5 records notwithstanding the problem with the books and
6 records.

7 THE COURT: Right.

8 MR. KIRBY: Okay. The problem here is what the
9 trustee has stated doesn't fall with any of the exceptions
10 to the hearsay rule. They're not business records because
11 of the trustee's own determination that they are unreliable.

12 THE COURT: Well, is there a difference between a
13 business record and an unreliable record? In other words,
14 can a business record be unreliable and still be a business
15 record?

16 MR. KIRBY: The case law recognizes that there's a
17 trustee where you have these fundamentally unreliable
18 records and you can verify them from third parties, for
19 example, and the --

20 THE COURT: But isn't that --

21 MR. KIRBY: -- that would be an appropriate way to
22 admit them.

23 THE COURT: But isn't that with respect to the,
24 I'll call them the confirmed PW transactions, isn't that
25 what the trustee's experts have done? And I know you take

1 issue with experts. But in other words they looked at the
2 books, as I understand it, they looked at the books and
3 records. They see these PW notations and then they look for
4 corresponding evidence of actual disbursements.

5 MR. KIRBY: Your Honor, what is the evidence be --
6 once you establish that -- remember, what the trustee has
7 stated is that there were no trades. There were no
8 securities purchased. There were no actual profits created.
9 And they actual -- and so any assertion that the profits,
10 that such profits were made is a false entry.

11 So then they pick and choose. They go through
12 everything on the statement is false because this little
13 entry called PW which we're going to assert is true and it's
14 not only that PW means something, but it means that there
15 was a check issued, cut and received by our clients. That's
16 the fallacy. That's what they're jumping on.

17 Now where the -- what the trustee has done and his
18 experts have done is verified through third party records
19 some of the transactions. What is the evidence? It's the
20 verification through third party. It's not because the PW
21 magically becomes true. It's because they've been able to
22 verify it.

23 Now that really goes to the really essence of what
24 the problem is when you look at the expert reports, and I
25 would like to get to that. But I would like to just outline

1 for you the problems with the hearsay itself.

2 It doesn't make PW suddenly not hearsay. It means
3 that it's been verified in some way, but there are 90 -- the
4 trustee represents there are 92,000 PW transactions, very
5 few of which have been verified. And the ones that were
6 verified and we can talk about, the ones that have been
7 verified, were -- are -- relate to a handful of defendants.
8 They've verified -- been able to verify less than ten
9 percent of the, sort of what I would call non-Norman Levy
10 transactions and we can talk about that.

11 So the trustee then turns after, you know, to the
12 extent perhaps that business records don't get them there,
13 they've created this new argument that somehow the ancient
14 records rule applies. And the problem with that is that it
15 rests on the authenticity of the records. We've briefed
16 this extensively, but the authenticity of the records deals
17 with the truthfulness and they don't even claim that the PW
18 entry was truthful. What they -- what I think the most fair
19 -- the most fair interpretation of what they've been able to
20 establish is that sometimes we're able to verify that
21 through third party records.

22 THE COURT: But doesn't that really go to the
23 strength of the inference that the trustee is asking me to
24 draw?

25 MR. KIRBY: Oh, but that -- no, because you start

1 with the proposition that they should not be permitted to,
2 as an evidentiary matter, to offer hearsay that doesn't fit
3 within the exception. So the -- if you take --

4 THE COURT: Could they -- could they rely --

5 MR. KIRBY: -- the PW out --

6 THE COURT: Could they rely on the cash in/cash
7 out records in computing the net equity claim?

8 MR. KIRBY: And the reason for that is, is for the
9 most part that's not disputed. In most of our cases we've
10 --

11 THE COURT: Well --

12 MR. KIRBY: -- stipulated to that. Okay.

13 THE COURT: Except for the participating the
14 claimants the PW isn't disputed either.

15 MR. KIRBY: Right. The -- because what the
16 trustee did was had no third party records with respect to
17 those cash in, cash out.

18 THE COURT: Well, then -- but then the argument is
19 that the inference is unwarranted.

20 MR. KIRBY: That is certainly an unwarranted in
21 the case where our client sitting never got it. Okay. But
22 the -- finally, I just want to mention on the hearsay, they
23 asked for the residual exception. And the problem with that
24 is, is that the burden is on the trustee to establish that
25 those are especially trustworthy. And, again, we're dealing

1 with whether the PW entry in and of itself means anything
2 and can be relied on.

3 The answer to that is I think clearly it cannot.
4 Where there are third party records that -- then as we
5 discussed a few minutes ago, then the question becomes
6 whether there's any reason or inference that can be drawn
7 from those third party records with respect to the
8 circumstances of our clients. That's really what the issue
9 is. It's not because PW means anything because they --

10 THE COURT: Well --

11 MR. KIRBY: -- have established that it doesn't.
12 What it means is that there are third party records --

13 THE COURT: Well, no. It may mean exactly what
14 the trustee says it means, right? In other words, there are
15 certain parts of the Madoff record keeping which are
16 accurate. There are others obviously the fictitious -- what
17 is essentially the fictitious trades and things like that
18 are not accurate. But there are parts that are accurate and
19 the question is which side the PW falls on.

20 MR. KIRBY: Well, there's also -- there's a
21 problem that they are seeking to prove records go from 1981
22 to 2008, 27 years. If there was some -- if the evidence was
23 that there was a systematic method of record keeping at
24 Madoff then it -- that was consistent that might be
25 something appropriate for an inference, but the actual

1 evidence from the employees who testified was that Madoff
2 was changing the -- its -- first of all, with respect to the
3 house manual which they've trumpeted as very few of the
4 Madoff records even complied with the house manual. The
5 trustee himself and experts acknowledged that. And the
6 employees when asked to in person had never seen or heard of
7 the house manual.

8 So the -- the real issue is, is there any
9 systematic -- is there any ability or reasonable way for the
10 Court to infer from records keeping that was kept in 1998 to
11 2008 what the circumstances of the record keeping was under
12 --

13 THE COURT: But, Mr. Kirby, don't I have to hear
14 the witnesses to make that determination?

15 MR. KIRBY: I think --

16 THE COURT: And let me just digress for a minute.
17 This whole procedure started as what looked like something I
18 was supposed to decide on papers. And I raised the issue of
19 testimony and then I raised the issue of taking the
20 depositions of the people who might know. And, in a sense,
21 your motion is trying to move it back to where it's just
22 being done on papers. It seems to me that it would be
23 helpful to hear what records there were, how they were
24 created. There are obvious witnesses. I may ultimately
25 agree with you, but it just sounds like -- it's very

1 difficult to make this determination without hearing those
2 witnesses.

3 THE COURT: I think it's important before we get
4 to that and the reason for these in limine motions is to
5 address and deal with the evidentiary issues up front
6 because I think as -- as I've indicated, the hearsay
7 problems need to be addressed. And then the expert -- the
8 problems with expert opinion and summaries need to be
9 addressed. And then if you elect to hear the witnesses
10 first we would simply renew those motions and they're going
11 to have to be decided at a later --

12 THE COURT: Well, it's --

13 MR. KIRBY: -- at a future date.

14 THE COURT: It may be more meaningful to decide
15 them in the context of a trial when I've had proof and you
16 can cross-examine their witnesses and they can redirect
17 their witnesses.

18 MR. KIRBY: But some of those things like the
19 hearsay issues are going to have to be complied with.

20 THE COURT: Well, but, you know, experts can rely
21 on hearsay evidence.

22 MR. KIRBY: Well, I -- they can rely on hearsay
23 according to the standards if it is -- it is a normal thing
24 for experts to rely on hearsay and it is not normal for a
25 forensic accountant to rely on a systematic system where

1 there are -- the records are totally missed.

2 THE COURT: Well, you know, I would like to hear
3 from the forensic accountants on what they rely on. I know
4 that there are many cases where forensics accountants will
5 reconstruct fraudulent records. We wouldn't need forensic
6 accountants if we didn't have problems with fraudulent
7 records and I would like to know what it is they normally
8 rely on and how they go about doing what they do generally
9 and how they did what they did in this particular case.

10 MR. KIRBY: I can respect that that might be
11 appropriate, but what the experts have written in their
12 reports is that they're not relying on their reconstruction
13 of missing records. What they're relying on is an inference
14 that they've drawn from what missing records would show.
15 And that's -- that -- there's no foundation for.

16 THE COURT: But I said that I would or would not
17 draw that inference. They're going to tell me that they
18 found that correlation that we discussed, and they're going
19 to ask me -- the trustee's going to ask me to draw the
20 inference that PW means in all cases that that was an actual
21 disbursement.

22 MR. KIRBY: Right. And --

23 THE COURT: And that's what this is really about.

24 MR. KIRBY: Pardon.

25 THE COURT: And that's what this is really about.

1 MR. KIRBY: I think first of all, Your Honor, we
2 should focus on and I do want to turn to a couple of issues.
3 But, first, let's focus on what the experts --

4 THE COURT: Keep your voice up.

5 MR. KIRBY: If there is -- what we're focusing on
6 what we're talking about is a summary evidence, then what
7 they have to summarize is something that's actual admissible
8 evidence. So that just summarizing hearsay is not going to
9 solve the problem.

10 THE COURT: But they provide a summary that showed
11 me the particular PW entries and the corresponding
12 disbursement record.

13 MR. KIRBY: Sure.

14 THE COURT: So that's -- I mean, in large part
15 that's what they're doing.

16 MR. KIRBY: Well, yes, but what they've done and
17 if you parse it and you read what their report says, they've
18 taken a period from 1998 into 2008, verified those records,
19 which were less than five percent of the records that exist
20 on the PW transactions and then sought to draw an inference
21 about missing records --

22 THE COURT: I understand --

23 MR. KIRBY: -- from that.

24 THE COURT: I understand that. And all I'm
25 suggesting is before I decide whether or not that's an

1 appropriate inference, I think it's appropriate to hear the
2 evidence about what they do and what they didn't do.

3 MR. KIRBY: Okay.

4 THE COURT: We're just going around in circles --

5 MR. KIRBY: Let's -- yeah.

6 THE COURT: -- at this point.

7 MR. KIRBY: Yeah. But let's just parse that for
8 minute. Okay. If it is hearsay as we represent, the PW is
9 hearsay, but the trustee's evidence of just summarizing
10 hearsay doesn't help you, and if there's lost or missing
11 records and Rule 1004 permits some alternative evidence when
12 they're lost or missing records, but they have to show some
13 -- put on evidence of if its admissible as to what the
14 alternative is by somebody with firsthand knowledge. These
15 people don't have firsthand knowledge.

16 So what we're left with is an expert opinion. And
17 what their -- they're not being -- they're not drawing the
18 inference, the alternate inference which they're -- Your
19 Honor has reserved for itself. What they're drawing an
20 inference about is what missing records would say if they
21 existed.

22 THE COURT: But I wouldn't accept that testimony.

23 MR. KIRBY: Okay. Okay. If that's the case --

24 THE COURT: I'm not going to --

25 MR. KIRBY: -- then we need not discuss it --

1 THE COURT: I'm going to --

2 MR. KIRBY: -- further.

3 THE COURT: -- I'm going to hear the evidence.

4 It's a statistical case. And then I'm going to make a
5 determination about whether it's a reasonable inference of
6 the inference that they're asking what the experts have
7 drawn but really they're asking me to draw as a reasonable
8 inference.

9 MR. KIRBY: Okay. But as long as it's clear that
10 you're drawing the inference and not --

11 THE COURT: I'm going to --

12 MR. KIRBY: -- the experts.

13 THE COURT: -- take the -- I'm not going to --

14 MR. KIRBY: Okay, because they're not qualified --

15 THE COURT: I'm not going to -- I agree with you.
16 The experts can't tell me what's in non-existent or missing
17 --

18 MR. KIRBY: Okay.

19 THE COURT: -- documents.

20 MR. KIRBY: Okay. I --

21 THE COURT: Why don't you -- why don't you -- we
22 have four motions so --

23 MR. KIRBY: I know. Okay. We've made three
24 motions to deal first of all with the other records and
25 you've already -- we've talked about them. But I do think

1 that some -- I would just like to highlight a particular
2 important point on that issue.

3 In the Collura report, footnote 10 for principal
4 report she --

5 THE COURT: What --

6 MR. KIRBY: -- mentions --

7 THE COURT: What exhibit is that?

8 MR. KIRBY: Footnote 10. I think it's -- page 13
9 of --

10 THE COURT: You know which -- there are a lot of
11 tabbed exhibits in there.

12 MR. KIRBY: It's --

13 THE COURT: This is -- is this her first report
14 that you're --

15 MR. KIRBY: Her first report.

16 THE COURT: -- that's in July?

17 MR. KIRBY: July, Your Honor.

18 THE COURT: Let me see if I can find it. Oh,
19 okay. I have it.

20 MR. KIRBY: She says -- and this is very
21 important.

22 THE COURT: Footnote 10?

23 MR. KIRBY: Footnote 10.

24 THE COURT: Oh, about Norman Levy.

25 MR. KIRBY: Right. Now the important thing is, is

1 that what the trustee has seen and his experts through an
2 analysis, Collura's analysis, when she factors the numbers
3 we've been able to verify some 52,000 of the 40 -- 92,000.
4 Of those, 47,000 are relate to Norman Levy. But the trustee
5 is putting in Collura documents that she is able to verify
6 through third party records almost all of the Norman Levy
7 transactions. Okay.

8 So I -- let -- Norman Levy settled this case six
9 years ago and dismissed his claims. They resolved the
10 issue. What we're talking about, then, is the subset of
11 documents that have nothing to do with Norman Levy. They
12 have inflated their statistics by using the Norman Levy
13 information and as the trustee himself has explained the
14 circumstances of Levy's transactions are inexplicable.
15 That's their words.

16 THE COURT: That goes to the weight, not --

17 MR. KIRBY: Okay.

18 THE COURT: -- not the admissibility of the --

19 MR. KIRBY: Okay. So my point is this --

20 THE COURT: -- of the testimony.

21 MR. KIRBY: -- is that when you parse through the
22 transactions which the trustee has verified that are non-
23 Levy transactions they are fewer than ten percent. And
24 certainly --

25 THE COURT: You're playing the same statistical

1 game in reverse that the trustee is --

2 MR. KIRBY: Well --

3 THE COURT: -- playing.

4 MR. KIRBY: -- yes. But then it's one thing for
5 them to come forward and say, I infer or I'm asking you to
6 infer from the evidence that because we've been able to
7 document more than 50 percent of these, and they -- I think
8 the number they used was 57 percent. But when you take the
9 Levy transactions out they've been able to document fewer
10 than ten percent.

11 And so that is a key statistic that I wanted to
12 highlight for you and it's one of the reasons why in our
13 motion we're suggesting that the Court should exclude the
14 evidence from people that have long since settled and are
15 not part of the case.

16 THE COURT: I don't see a legal basis to do that.
17 That's an argument that goes to the weight, not the
18 admissibility of --

19 MR. KIRBY: Okay.

20 THE COURT: -- the evidence. And let's remember
21 this is a bench trial. There is no jury. I know what I can
22 consider and I know what I --

23 MR. KIRBY: Okay.

24 THE COURT: -- shouldn't consider even if I hear
25 it.

1 MR. KIRBY: I -- the purpose of this motion is to
2 -- the purpose of these motions is to get a preliminary read
3 on these issues.

4 Now I --

5 THE COURT: Why don't you wrap it up, though,
6 because --

7 MR. KIRBY: Okay. I will emphasize then we've
8 talked about the expert testimony and I think that the key
9 question that the Court should keep in mind in deciding --
10 you -- you know, we would ask the Court to preliminarily
11 rule on these issues because it will make the trial of this
12 and the evidentiary motions easier to deal with at trial,
13 that speculation about missing records is not something that
14 can be admitted.

15 And we're asking the Court to specifically also
16 address the hearsay issues in advance of trial because I
17 think that the hearsay issues need to be addressed because
18 if -- to the extent that the experts rely on it, let them
19 testify about that. That's a different question from
20 whether the documents themselves can be offered for the
21 truth of the matter asserted.

22 And so we're suggesting that if the Court is
23 inclined to go and hear what the experts have to say, that
24 you do make a preliminary ruling about the hearsay.

25 Thank you, Your Honor.

1 THE COURT: Thank you.

2 MS. HOANG: Good afternoon, Your Honor.

3 THE COURT: Good afternoon.

4 MS. HOANG: Lan Hoang on behalf of the trustee and
5 I'll be very brief, and I won't cover any statistics. I can
6 promise you that.

7 I want to start out with the BLIS documents that
8 the claimants have said that, you know, they're not business
9 records. They're -- we're not sure because they're part of
10 a fraud we don't know whether they -- we don't think that
11 they should be in or out. Let's take a step back. The
12 trustee is a -- is a stranger to the -- to BLIS, to the
13 debtor and steps into the -- and step -- when he is
14 appointed it is his duty to come in, secure the records,
15 take custody of them, preserve the records, and that's what
16 he did here. That was shortly after his appointment.

17 Then the trustee takes a look at the records and
18 says -- and determines which -- tries to -- based on his
19 expertise to reconstruct the records. But this -- we're not
20 disputing that BLIS was a fraudulent entity, but fraudulent
21 entities still have business records, and that is the
22 trustee's job, which he's done here, is to assemble those
23 records in some form or manner that provides the Court with
24 rely -- provides the Court with reliable records upon which
25 to make determinations like PW, profit withdrawals, like

1 cash additions, cash withdrawals. I mean, that's what the
2 trustee's prepared to do here and what he has done.

3 THE COURT: Well, I don't understand Mr. Kirby to
4 be arguing that what he did was necessarily unreasonable
5 within the meaning of the statute. He's just saying he was
6 wrong.

7 MS. HOANG: I'm sorry. I --

8 THE COURT: I mean, in other words --

9 MS. HOANG: -- I come here and --

10 THE COURT: I know. The trustee could be
11 reasonable in what he does, but he could still be wrong.

12 MS. HOANG: That's the position the trustee is in
13 based on whatever books and records come into his
14 possession. And on that issue particularly is, you know,
15 the trustee has to put forth at trial, put forth at an
16 evidentiary hearing authentication of these documents.
17 Well, because he is a stranger to the rule -- the case law
18 provides a -- he's provided some leniency because he
19 normally can't as a CFO or a custodian of record in a debtor
20 he does not have that firsthand knowledge.

21 So what has he done here? I've laid out what he
22 did with the chain of custody. He's going to provide his
23 expert test -- his -- through his experts who have examined
24 all of the documents. He's like -- and have determined
25 there is reliability across the document. And Mr.

1 Greenblatt has looked at the documents from 1981 to -- I'm
2 sorry. I'm just -- to 2008. Ms. Collura has looked from
3 1998 to 2001 and has reconciled those with third party
4 documents.

5 And what they've determined is cash in, cash out,
6 which is net equity. Those sources of information, those
7 documents are reliable. You can't look at anything else but
8 those --

9 THE COURT: Well, the PW isn't -- the question is
10 whether PW falls into that category. And the argument is
11 being made the only reason they're "reliable" for the post-
12 1998 period is because there's corroborating evidence, not
13 because they have any inherent truth -- you know, veracity.
14 But with respect to the pre-1998 transactions there is no
15 independent verification of their veracity.

16 MS. HOANG: I would submit --

17 THE COURT: And they're pure hearsay.

18 MS. HOANG: I would submit they are. I mean, I --
19 first of all, I would admit that based on the documents that
20 Mr. Greenblatt had he can trace the transactions over across
21 the BLIS documents and (indiscernible). In the period that
22 Ms. Collura looked at she was able to verify with third
23 party documents because those were the bank records that
24 were available at the time.

25 THE COURT: Okay.

1 MS. HOANG: And I do -- all business records are
2 -- all company records are hearsay, but there's exceptions
3 (indiscernible) and I would submit that the trustee meets --
4 will at trial meet those -- that exception and the
5 requirements of that exception.

6 On the point that the trustee's experts should not
7 be able to come in here and provide any testimony based on
8 those records, I think Your Honor noted before even if those
9 records are hearsay, which we say we're not under the
10 business exception under the ancient documents under the
11 catchall provision, even if it is hearsay if the -- if the
12 experts, forensic accounts find that these are documents
13 that they would reasonably rely upon in the course of their
14 duties, carrying out their duties as -- to this court they
15 can rely on them and provide expert testimony to this
16 support.

17 And I would -- on that note I would say that the
18 expert testimony would be extremely helpful to this Court
19 particularly in this matter where you have a fraud that's
20 spanned 40 years and you have a loss of approximately \$17
21 billion. What the experts have done here is they've gone
22 through and secured and reconciled millions and millions of
23 documents. And I don't think that this Court has the time
24 or wants to go have somebody stand up here and go through
25 each of those documents and try to assemble it. And I think

1 that's where the experts can aid the Court in that regard.

2 With regard -- just briefly, I just want to say
3 that the fact that BLMIS was a fraud does not mean that all
4 the records are reliable. I know that that point was made
5 that, well, it's a fraud so let's throw out everything.

6 But if you throw out everything that is at BLIS,
7 number one, what trustee can do their job.

8 Number two, you have to throw out the credits they
9 get for the cash deposits as well.

10 THE COURT: I was going to ask you how he's going
11 to prove his case if --

12 MS. HOANG: Right.

13 THE COURT: -- if they throw everything out.

14 MS. HOANG: I mean, you don't get to pick and
15 true. That's why (indiscernible) document.

16 On the summaries, expert summaries of, again,
17 they're exactly what Your Honor pointed out. Look, I'll
18 give you the here's the PW transactions. Here's the
19 documents that they reconcile with. If there's a document,
20 if there's not a document, then it's up to Your Honor to
21 draw the inferences from there.

22 THE COURT: Okay. This is not your motion. Let
23 me --

24 MS. CHAITMAN: I'm sorry.

25 THE COURT: This is not your motion. You want to

1 be heard briefly, Mr. Kirby?

2 MR. KIRBY: Yeah. I would like to follow up on
3 two points that counsel made.

4 First of all, they act as if it's just a chain of
5 custody issue. But authenticity is much more than a chain
6 of custody. It is truthfulness. And when the trustee
7 started this process in 2009 and reached the conclusion that
8 the doc -- that the -- Madoff's statements were unreliable
9 they did so by and have steadfastly asserted that the
10 statements are unreliable because they are artificial
11 trades, there was no trading, they made everything up.

12 They have proceeded for eight years now in this
13 case with the proposition that these are unreliable
14 documents.

15 THE COURT: Except for the cash in, cash out which
16 the --

17 MR. KIRBY: Pardon.

18 THE COURT: Except for the cash in, cash out which
19 the Second Circuit --

20 MR. KIRBY: And --

21 THE COURT: -- has said is reliable.

22 MR. KIRBY: And I understand that. But we are
23 dealing with a subset of doc -- of the issue as whether, and
24 this is really goes to the essence of our hearsay issue,
25 which is that somehow this statement on that document is

1 somehow now suddenly truthful, but everything else in the
2 document is not truthful. It's different from the cash in,
3 cash out because for the most part that's been unable to
4 verify through third party sources.

5 THE COURT: What if it can't be though? Suppose
6 there's an old withdrawal and the bank records don't exist,
7 are you saying that that shouldn't be considered either?

8 MR. KIRBY: Well, Your Honor, let's face it. This
9 is a highly unusual case. What makes it unusual is that
10 normally, you know, this is -- SIPA is part of the 1934 act.
11 The SEC has longstanding rules about what records brokers
12 are supposed to keep. It's six years is what the records of
13 brokers are supposed to keep. Banks have specific rules
14 about what bank records are supposed to be kept. And that's
15 why what's happened is, is that it -- you know, they don't
16 have records going back before 1998.

17 The problem with this is, is that what is an
18 innocent customer like our clients caught in the middle of
19 this when the issue before the Court is what are
20 transactions that are long since passed anybody's statute of
21 limitations and what are they supposed to do.

22 What -- for the trustee -- I mean, to -- it is a
23 problem for the trustee, if I were in the trustee's shoes,
24 but the problem is, is that you have to take into account
25 what the customers can reasonably expect it to --

1 THE COURT: But, you know, I hear --

2 MR. KIRBY: -- to --

3 THE COURT: -- you, but how is this different from
4 any case where time has passed and evidence is lost --

5 MR. KIRBY: Well --

6 THE COURT: -- and inaccessible?

7 MR. KIRBY: -- that's -- I totally agree. But you
8 have to put -- at this point of the proceeding for our
9 clients what we're dealing with is the trustee has -- once
10 our clients come forward and say these -- these are wrong,
11 we did not get that cash, then it is for the Court to decide
12 based upon the evidence with the normal rules of evidence
13 that apply.

14 And that is our point and that -- you know, if the
15 Court wishes to defer that we respect that. But it becomes
16 a strictly that the trustee has the burden of demonstrating
17 through evidence, through admissible evidence and, you know,
18 that's why we suggest that it would be best for the Court to
19 address the (indiscernible) issue first. If you want to
20 reserve on the experts we can deal with that at -- after
21 you've heard their testimony. But I think the hearsay issue
22 needs to be addressed --

23 THE COURT: I still have the question, though, and
24 I'll just raise it. You don't have to answer it --

25 MR. KIRBY: Yeah.

1 THE COURT: -- because I've indicated what I --
2 how I think this should be decided.

3 But if the statute says the trustee is supposed to
4 determine net equity based on the books and records or other
5 evidence to his satisfaction, what else is he supposed to do
6 in a case like this except hire forensic accountants to try
7 and confirm what the books and records show?

8 MR. KIRBY: I understand the problem and the
9 plight of the trustee. And -- but I think the issue is, is
10 as an administrative matter the trustee has to do his best
11 shot, take his best shot at it. Then the way the rules work
12 is that the customer then must come forward with evidence
13 saying the trustee got it wrong. Once we've done that, now
14 the Court is faced with having to decide it and the
15 trustee's faced with having to deal with the evidentiary
16 rules because there's no presumption anymore. The
17 presumption is overcome.

18 And that's the issue that we are now before --
19 that's the issue that's before the Court and would be before
20 the Court at trial, whether the trustee has satisfied his
21 burden on an evidentiary basis to over -- to -- whether --
22 that the cash actually was withdrawn.

23 THE COURT: Thank you.

24 As I've indicated I want to hear the testimony of
25 the experts and I know that there are other people who were

1 deposed and will testify either through deposition or live
2 regarding how the trust -- how these books and records were
3 maintained, and particularly what the experts did.

4 The only thing I'll say which I'll repeat is I'm
5 not going to hear expert testimony that missing records
6 would contain certain entries or that it's reasonable to
7 infer that if you have a high correlation, therefore I can
8 -- I should infer that all PW entries represent cash
9 withdrawals. That's an inference that I can draw or not
10 draw. I doubt it's within the expertise of the forensic
11 accountants and, frankly, it doesn't help me at all.

12 So let's just leave it at that.

13 MR. KIRBY: Thank you.

14 THE COURT: Now I have the trustee's -- oh, I'm
15 sorry. You did -- you were also -- I sat you down, but you
16 also had a --

17 MS. CHAITMAN: I did. And if --

18 THE COURT: I realize you joined in the motion. I
19 shouldn't have --

20 MS. CHAITMAN: I actually --

21 THE COURT: -- been so --

22 MS. CHAITMAN: -- filed a separate motion.

23 THE COURT: Right.

24 MS. CHAITMAN: I also joined in.

25 THE COURT: Right.

1 MS. CHAITMAN: If I may, Your Honor, I just want
2 to set the framework for this because I do think that
3 there's a misunderstanding.

4 There are records that Madoff has that are
5 reliable for the period of the profit withdrawals, which is
6 the 1980s. Most customers were put into split strike in
7 1992 or 1993. There were a small number of customers who
8 stayed in convertible arbitrage which is where the profit
9 withdrawals were until, I think, the end of 1997.

10 But we're primarily dealing with a period of the
11 1980s.

12 THE COURT: But I'm told that -- I understand
13 that. But I'm told -- you had said that there were no
14 profit withdrawals after, I think, 1998.

15 MS. CHAITMAN: After 1998 there were cash
16 withdrawals. There were journal entries which constituted
17 cash withdrawals. But there was no entry on a statement
18 saying PW.

19 THE COURT: I thought there was.

20 MS. CHAITMAN: I do not believe so. But the thing
21 is that I --

22 THE COURT: Because there was something like over
23 5,000 profit withdrawal entries in that 1998 to 2008 period.

24 MS. CHAITMAN: The problem is if you -- if you
25 look at the Collura report she defines the profit withdrawal

1 as a profit withdrawal, a PW, a journal entry, JRNL or a
2 cash withdrawal, CW. Well, once you expand the universe to
3 include other terms where -- which were used in a different
4 trading strategy in a different time period it's not
5 applicable to the definition of a profit withdrawal.

6 THE COURT: I don't know what it means that's why
7 I need testimony for that.

8 MS. CHAITMAN: I understand that. But I just want
9 to explain one thing. The testimony of the Madoff
10 employees, which Your Honor suggested we take, did establish
11 some very interesting facts.

12 Number one, Madoff required when anyone wanted to
13 withdraw funds that they send a letter saying they wanted
14 withdrawals. And he required that if they wanted to now
15 stop taking the withdrawals they had to send a letter
16 saying, I no longer want my withdrawals.

17 For many, many customers including many of my
18 clients for whom I have not asserted this objection, they
19 wrote letters asking for profit withdrawals, wrote letters
20 saying, I don't want them anymore. There are no such
21 records with respect to Blecker. There isn't any letter
22 from him ever asking for a profit withdrawal or then saying,
23 I don't want them anymore.

24 And the -- there's another piece of evidence
25 that's absent in Blecker. Annette Bonjourno (ph) testified

1 that with respect to every check that was sent out as a
2 profit withdrawal the document consisted of the check and
3 then a serrated edge with a confirmation on the bottom of it
4 which a lot of businesses have.

5 She said that the bottom half of that was put into
6 each customer file. And, again, for many of my clients
7 there is in their files the bottom half, that edge, that
8 serrated edge half is in their files going back to the
9 1980s. So Madoff actually kept detailed records in every
10 file and the -- all the employees testified that they had to
11 maintain the records and they believe that all of those
12 records were maintained from the 1980s until Mr. Card (ph)
13 was appointed so that there are documentary records to
14 support the payment of profit withdrawals to the people who
15 received them.

16 But in the case of the Blums, I believe, and
17 certainly in the case of Mr. Blecker there's no documentary
18 evidence. And that, I think, is important. I totally
19 understand what Your Honor is saying, but I just wanted to
20 make that point.

21 THE COURT: Thank you.

22 What's the next motion? The trustee's motion in
23 limine to exclude the testimony of Joel and Norman Blum.

24 (Pause)

25 THE COURT: Go ahead.

1 MS. WOLTERING: Good afternoon, Your Honor.
2 Catherine Woltering on behalf of the trustee. We're here
3 today on all the motions in limine, but I am here to talk
4 about motion in limine number 2 seeking to exclude certain
5 testimony of participating claimants, Joel and Norman Blum.

6 I'll be using first names where necessary to
7 identify otherwise just generally as Blums. I'll keep this
8 brief. I promise.

9 We're here today asking the Court to exclude
10 certain testimony offered by Joel and Norman Blum about
11 subjects where they lack personal knowledge, attempt to
12 offer inadmissible character evidence or hearsay evidence by
13 an exception.

14 Because the Blums have not identified whether or
15 not they will be testifying live --

16 THE COURT: I thought the Blums did not offer any
17 character evidence. They're offering (indiscernible)
18 evidence, right?

19 MR. KIRBY: Right.

20 THE COURT: Okay. So we agree on character
21 evidence.

22 MS. WOLTERING: Yes. Because they're -- they have
23 not identified whether or not they're testifying live or by
24 deposition designation the trustee seeks alternative relief.

25 First, if they testify by a deposition designation

1 for an order striking the portions of the testimony
2 identified in the chart contained at Exhibit 2 of the
3 Sheehan (ph) declaration, or alternatively if they testify
4 live for an order prohibiting the Blums to testify about
5 subjects for which they lack personal knowledge.

6 THE COURT: Well, wouldn't I have to hear their
7 testimony to figure out if they lack personal knowledge?

8 MS. WOLTERING: Based on the deposition
9 transcripts it's clear that they lack personal knowledge and
10 --

11 THE COURT: But --

12 MS. WOLTERING: -- they --

13 THE COURT: But normal procedure -- you know, I
14 have a problem with motions in limine in these bench cases
15 where it's based on relevance or something like that.

16 Normally, they would designate -- if they're going
17 to testify by deposition they would designate the testimony
18 they wanted and you would designate what you object to and I
19 -- you know, I would deal with it. I don't understand the
20 purpose of --

21 MS. WOLTERING: And --

22 THE COURT: -- a motion in limine. Are --

23 MS. WOLTERING: These --

24 THE COURT: -- they going to testify live because
25 if they're going to testify live this is all a waste of

1 time.

2 MR. KIRBY: Your Honor, Joel Blum for sure.
3 Norman Blum is 86. Depending on when we have this
4 proceeding I hope he's going to be able to testify.

5 THE COURT: All right.

6 MR. KIRBY: But I can't -- you know, I -- to be
7 truthful I -- you know --

8 THE COURT: Where do they live?

9 MR. KIRBY: Pardon.

10 THE COURT: They live in Florida?

11 MR. KIRBY: He lives in Florida. It's going to be
12 a challenge for him to come.

13 THE COURT: Okay. Go ahead.

14 MS. WOLTERING: Your Honor, I submit and I'll -- I
15 have a chart to show you.

16 THE COURT: Where is that chart?

17 MS. WOLTERING: I actually -- I sent it to counsel
18 yesterday and I'm going to pass it up. May I --

19 THE COURT: Okay.

20 MS. WOLTERING: -- I have a motion to
21 (indiscernible).

22 (Pause)

23 THE COURT: So as you'll see from this chart I
24 just wanted to look through why specifically in this
25 instance personal knowledge is so relevant.

1 The Blums challenged 322 PWs that occurred in four
2 accounts at BLMIS all between 1986, it's the top four
3 accounts, 1986 and 1997. 249 of those 322 profit
4 withdrawals occurred in their parents' accounts. So Joel
5 and Norman were not the customer. They received inter-
6 account transfers from those. And those are the -- those
7 are the transactions that form the basis to which they must
8 have personal knowledge.

9 We're not objecting to Norman's ability to
10 challenge the 73 profit withdrawals that occurred in his
11 account, just the 249 that occurred in their parents'
12 accounts.

13 And it's well settled law that it's the Blums'
14 burden to establish a sufficient foundation for admission of
15 evidence including personal knowledge under 602. This is
16 the threshold issue. If the Court finds that the Blums lack
17 personal knowledge of the matter, the 249 profit withdrawals
18 in their parents' accounts in this proceeding, then Your
19 Honor doesn't need to get to the question of hearsay or
20 character or habits. Without personal knowledge no
21 testimony, even testimony that would otherwise be admissible
22 as an exception to hearsay or as habit can be admitted.
23 This can be done from their -- we know this from their
24 deposition that they lack personal knowledge.

25 When Joel was asked he testified that he never

1 assisted his parents with their investments, but that rather
2 he corroborated with his brother Norman in the late 1990s
3 into early 2000s, but it was a gradual escalation that
4 probably occurred within the last four or five years of his
5 life.

6 Norris (sic) passed away in 2000, their father, so
7 that last four or five years would be at the earlier 1998.
8 Norman testified that he didn't assist his father with his
9 BLMIS accounts or financial transactions until around 2000.
10 I didn't assist him. I didn't assist him in 1997. As I
11 have said before he was totally independent. It wasn't
12 until after 2000.

13 He also explains in his customer claim that he had
14 a severe stroke in April of 1994 that affected both is short
15 and long-term memory. In part, this is why he has no
16 personal knowledge of what occurred during the relevant
17 profit withdrawal period.

18 Joel and Norman also concede at their deposition
19 that they never discussed profit withdrawal transactions
20 with their parents, had no real time knowledge of the PW
21 transactions occurring in their parents' accounts and did
22 not have access to information about their parents' finances
23 or financial planning during that period that would allow --
24 give them an independent basis for personal knowledge.

25 Joel was asked at least three times at his

1 deposition if he knew whether or not his father received
2 checks in connection with the BLMIS accounts. And each time
3 he testified that he didn't know and had no personal
4 knowledge:

5 "Question: Did you discuss with your father
6 whether he received checks from BLMIS?"

7 "Answer: I don't recall discussing that."

8 "Question: Do you know if your father received
9 checks from BLMIS in connection with his investments?

10 "Answer: I don't know."

11 "Question: DO you know if your father received
12 checks in connection with his BLMIS investments?"

13 "Answer: I don't know."

14 He also testified that he did not know what
15 purpose his father had for opening the accounts. He never
16 assisted with his parents' investments. He never reviewed
17 his parents' BLMIS statements or their bank records and he
18 never witnessed and has no knowledge of whether his father
19 spoke or had any communications with BLMIS employees.

20 Norman's testimony has similar fatal flaws. When
21 he was asked, "And did you discuss with your father what
22 withdrawals he was taking from BLMIS" he answered, "I cannot
23 tell you specifically what we talked about or did not." And
24 even Mr. Kirby recognized Norman's lack of personal
25 knowledge and objected to our question. "Question" --

1 THE COURT: But he knew about the quarterly
2 withdrawals, right?

3 MS. WOLTERING: He knows about the quarterly
4 withdrawals for the 2000 and after period, not for the pre-
5 2000 period.

6 "Question: But if he did do it" -- check out
7 profit withdrawals -- "prior to 2000, you wouldn't have seen
8 the deposits, correct?"

9 "Kirby: Objection. Calls for speculation. You
10 can answer it."

11 "Answer: Well, I -- look at the -- find it from
12 the -- look at the checkbook, see if there's any money in
13 there. He just didn't take out that kind of withdrawal as
14 far as I'm concerned. Can I prove it? No."

15 And just like his brother he also testified that
16 he never received or reviewed his parents' BLMIS statements
17 during the relevant time period. He never balanced his
18 father's checking account or assisted with check deposits.
19 He never witnessed and had no knowledge of who his father
20 spoke with at BLMIS or if he ever called or sent letters to
21 BLMIS.

22 In Levy versus Bessimer (ph) Trust we learned that
23 where a deposition testimony establishes that a witness
24 lacks personal knowledge required by 602 and would simply be
25 testifying about what he or she heard from others or

1 speculation the witness should be precluded from testifying
2 at trial.

3 This deposition testimony clearly establishes that
4 the Blums lack the personal knowledge required by 602 and
5 they have the burden to prove that they have a foundation of
6 evidence sufficient to make this admissible. And they have
7 put forth no other evidence except their own self-serving
8 statements. But their deposition testimony is clear. They
9 had no involvement during the relevant period. They weren't
10 the account holder. They wouldn't have received the checks,
11 and they can't offer anything except what they think their
12 parents would have done or speculate about why they would
13 have done it.

14 Such speculation does not make personal knowledge
15 as Your Honor found in In Enviro Solutions of NYC. A
16 claimant or witness about personal knowledge is unlikely to
17 be able to offer any admissible testimony.

18 The truth is Joel and Norman have no idea if their
19 parents received the 249 profit withdrawal checks at issue
20 and can offer no evidence to the contrary beyond their own
21 self-serving speculation. When you look at the customer
22 files there is communication between their parents and BLMIS
23 which reference profits or remitting proceeds of
24 transactions. So it actually counts against them.

25 Rather, what they offer are statements like, as

1 far as I'm concerned he would never take -- he would have
2 never done things like that, or I just can't imagine he
3 would have done it that way; I can't imagine that knowing
4 him he would have done this; I'm certainly not aware of him
5 ever doing this.

6 While the Blums claim that their knowledge is
7 somehow permissible based on repeated interactions or
8 discussions with their parents, their testimony shows it's
9 clearly not. They admit that they never discussed profit
10 withdrawals with their parents. They never assisted with
11 their parents' finances. They never balanced their parents'
12 checkbooks. They didn't assist in the deposit, and they
13 have no idea what communications they had.

14 And even if they could show any independent
15 evidence to support what they think their parents did, the
16 law is clear that even when a witness has personal knowledge
17 they can't opine on somebody else's motives or why they do
18 what they do, only the acts that they witnessed. So their
19 parents' motives as to why they would have done what they
20 did can't fall within the scope of personal knowledge.

21 So the Blums have not met their burden to show
22 personal knowledge of the 249 profit withdrawal transactions
23 occurring between 1986 and 1997 in their parents' accounts.
24 And as such, regardless of any of the other arguments about
25 habit or hearsay, you don't need to get there. It's a

1 threshold issue. Their testimony should be excluded.

2 But, and I promised to keep it brief, as to habit,
3 habit is the type of evidence where your behavior is semi-
4 automatic. So how you answer the telephone, whether you
5 walk up the stairs two at a time, it requires observing
6 somebody on a frequent basis in the same situation that
7 you're then trying to testify it was their habit to respond
8 almost automatically to. It's conduct that is specific and
9 particularized and capable of almost identical reproduction
10 in every situation.

11 The Blums' burden to establish this has not been
12 met. They say that they never saw their parents do this.
13 They never saw those interactions or transactions. They
14 weren't -- so they never would have had the opportunity to
15 develop the foundation required to prove a habit.

16 Thus Norris's purported disposition for saving or
17 spending money is simply character evidence under 404 that
18 we can all agree is precluded.

19 And as to hearsay I don't need to go on very long.
20 I promise this is my last point. In order for any hearsay
21 exception to apply the Blums must still show that they had
22 personal knowledge about the matter to which they're
23 speaking. A factual assertion based on conjecture or
24 surmise to which the declarant would not be allowed to
25 testify if called to the witness box does not become

1 admissible under an exception to the hearsay rule.

2 And they raise the residual exception which
3 requires a very high threshold for circumstantial guarantees
4 of trustworthiness.

5 THE COURT: You raised it also, though, huh?

6 MS. WOLTERING: But the trustee has other books
7 and records that support his claims. They've offered
8 nothing. They could have submitted a proffer in connection
9 with these motions, some evidence, anything beyond their own
10 self-serving statements to show that they have the knowledge
11 or that the statements, the hearsay statements are
12 inherently trustworthy. But they haven't. And those types
13 of evidence are whether the declarant was under oath, the
14 voluntariness of his statement, whether it was made based on
15 personal knowledge, the proximity and time to the events,
16 whether the statements are corroboratory (sic), the
17 declarant's motive to (indiscernible), whether it's self-
18 serving, whether it was prepared in anticipation of
19 litigation, whether the declarant's memory or conception is
20 faulty. In Norman's case he says his memory is faulty.

21 So it doesn't fall within the residual exception.
22 And the only other exception that they put forth is 803,
23 state of mind. And 803 state of mind is clear that it can't
24 -- you can't offer the hearsay statement as to state of mind
25 to prove the fact remembered. So state of mind can't be

1 used to prove the fact that they say they are remembering or
2 memory. It's usually used --

3 THE COURT: That's not coming out so clear.

4 MS. WOLTERING: It's usually used to talk about
5 somebody's feelings. So I feel scared --

6 THE COURT: Are you arguing that his state of mind
7 is not relevant to the proceeding?

8 MS. WOLTERING: Yes.

9 THE COURT: Thank you.

10 MS. WOLTERING: Thank you, Your Honor.

11 MR. KIRBY: Your Honor, these issues really
12 clearly go to the weight. Our clients --

13 THE COURT: Well, they're saying -- here's the
14 issue I have. I think it's -- well, I won't say that.
15 Well, I was going to say if Norris had said to Joel or
16 Norman, I never got a profit withdrawal check and they tried
17 to testify to that would clearly be hearsay.

18 MR. KIRBY: Right.

19 THE COURT: Okay.

20 MR. KIRBY: I accept that.

21 THE COURT: So on less evidence they're really
22 testifying to the same thing or trying to testify to the
23 same thing, aren't they?

24 MR. KIRBY: No. You're trying to prove a
25 negative. Let's assume for a moment what the trustee can't

1 prove which really goes to the first point that we raised at
2 issue is that there weren't any profit withdrawals checks.
3 As Ms. Chaitman said, file with (indiscernible) Blums
4 doesn't have any receipts and they've identified hundreds of
5 supposed checks went to Norris and there are no receipts in
6 Norris's account.

7 So there's something amiss here. Okay. Now the
8 question is, is what our client --

9 THE COURT: But you don't need Norman or Joel to
10 testify to that. We'll ask the trustee's expert whether
11 they found that --

12 MR. KIRBY: Well --

13 THE COURT: -- and --

14 MR. KIRBY: -- they have not produced --

15 THE COURT: All right.

16 MR. KIRBY: We have had an elaborate discovery
17 process. There have been no records with respect that
18 Norris Blum produced and Collura identifies that there are
19 no such records.

20 THE COURT: But you don't -- you don't need their
21 testimony. So what does their testimony do?

22 MR. KIRBY: Their testimony does this. They are
23 able to explain what -- because they describe at length the
24 discussions they had about what their father's program --
25 investment program was and what his intent was. And they

1 can testify as to firsthand knowledge about that. And it --
2 what they're saying is that the Madoff accounts were
3 established for the purpose of long-term savings, especially
4 their mother's account was exclusively done for that
5 purpose. When their -- the account -- they were the
6 trustees for their mother's account upon her death.

7 And so they are clearly in a position to know
8 about this. Now that Norris was also involved, but they --
9 they are -- can testify and they will explain and they have
10 explained the foundation for their testimony. They conclude
11 that such checks would not -- they would certainly have
12 detected them based upon their interactions with their
13 father over time.

14 THE COURT: Well, that's what I wanted to ask you,
15 which isn't really clear. The extent to which they actually
16 prepared his deposit slips or wrote checks for him and would
17 have seen his checkbook on a regular basis and would have
18 gone to the bank for him, that I could understand if, for
19 example, and the timing may be off, but I know that he and
20 Norman lived together for a while.

21 MR. KIRBY: Right.

22 THE COURT: Although Norman was incapacitated --

23 MR. KIRBY: Right.

24 THE COURT: -- at the time. But let's assume that
25 they lived together and during that period the father was

1 growing old, Norman is helping him. He's taking the mail.
2 He's opening the mail. He's preparing the deposits. To me
3 that would indicate some personal knowledge about what was
4 going on. I just didn't see it in the portions of the
5 deposition that I was pointed to that you --

6 MR. KIRBY: Your --

7 THE COURT: -- cited.

8 MR. KIRBY: Your Honor, he -- Norman's testified
9 and will testify that after his stroke his father left his
10 practice of medicine in New York, came down, nursed him back
11 to health eventually over a period of time and then his
12 father relocated into -- in Florida.

13 At that point Norman became fully functional
14 eventually over time. The details of that are very vivid as
15 you can imagine. But over time his father, who was 103 I
16 think when he passed away, lived in Florida and over time
17 Norman became more and more involved in his financial
18 affairs.

19 Joel testified that he met -- he came down every
20 quarter to -- and his father was very candid about what his
21 financial planning was.

22 THE COURT: But isn't that testimony just simply
23 hearsay about what the father told them?

24 MR. KIRBY: No, because that's the foundation for
25 what they understood. They -- I mean, and that's -- that

1 lays the foundation. They're not testifying what their
2 father told them. They're testifying what their conclusion
3 was that cashing hundreds of checks was not within his
4 program for the long term savings, what these accounts were
5 used for. He -- they both testified that their father used
6 these accounts as long-term savings accounts. There was a
7 period of time where they took regular quarterly --

8 THE COURT: But did they know that because that's
9 what the father told them or do they know that because they
10 independently found that out?

11 MR. KIRBY: Because they ultimately were the
12 heirs. He explained to them the estate that he was leaving
13 them. He had many interchanges with them. They were
14 ultimate -- they were both -- remember, they were not only
15 just heirs, they were trustees for living trusts. So they
16 went over his financial affairs at some length and they were
17 responsible ultimately as trustees for the living trust for
18 those -- for all of his finances.

19 And so they have a foundation for that testimony.
20 We think the issue really goes to weight. And, you know,
21 hope -- we're sure, I think Joel Blum will be able to come
22 to the testimony. He's still a practicing doctor. And
23 hopefully if we can get -- we can work together with the
24 trustee and schedule the hearing and be able to bring Norman
25 Blum himself to --

1 THE COURT: All right.

2 MR. KIRBY: -- to the --

3 THE COURT: Well, if Norman and Joel are going to
4 attend, then I don't have to decide this motion because
5 they're going to be questioned. And if it turns out that
6 there's, you know, a lack of foundation through the
7 testimony I'll just sustain the objection.

8 MR. KIRBY: Right. But I do think there is a
9 foundation for that. And it really goes back to the thing I
10 said in the earlier time. We're dealing with a very
11 difficult situation where we're -- the trustee -- there's no
12 independent third party evidence of these checks. And the
13 question is, is how does an innocent customer like these
14 people, how do they defend against something like this? Are
15 they just supposed to take whatever the trustee says?
16 That's what you get. Tough.

17 How are -- this is a customer protection statute.
18 It's intended to have some benefit for the customers who are
19 active and to suggest that somehow that each customer must
20 look back and keep records for 30 years including their
21 deceased parents in case the broker that ultimately -- you
22 know, the registered broker ultimately fails. That's kind
23 of not what --

24 THE COURT: As you --

25 MR. KIRBY: -- we think --

1 THE COURT: -- advised me in the last argument,
2 the rules of evidence will apply to these proceedings and
3 that cuts both ways.

4 MR. KIRBY: We're fine with that.

5 THE COURT: Okay.

6 MS. WOLTERING: Your Honor, just one brief point.

7 The question is not whether or not they can
8 testify about their own personal knowledge as to their
9 accounts. The question is really whether they have personal
10 knowledge during the relevant time period as to their
11 parents' receipt of profit withdrawals.

12 So all of the conduct and interactions he's
13 talking about and trying to say form the basis occurred
14 after the last profit withdrawal and in July of 1997.

15 So they weren't engaged in any capacity during the
16 relevant time period to have the personal knowledge to
17 testify about whether or not their parents received those
18 profit withdrawals, which is the very limited issue that
19 they themselves are advocating we should be sticking to.

20 THE COURT: Well, suppose -- and I don't know if
21 this is the case -- that after what you define as the
22 relevant period Norman looked at a statement and asked his
23 father, what's this PW and the father said, I don't know,
24 could he testify to that?

25 MS. WOLTERING: If it fell within a hearsay

1 exception --

2 THE COURT: Well, that's my question. Is it
3 hearsay or is it just that it's irrelevant because it
4 doesn't relate to a period that the profit withdrawals
5 relate to.

6 MS. WOLTERING: So personal knowledge and hearsay
7 are often two sides to the same objection. They're just
8 procedurally slightly different depending on how the
9 deponent testifies.

10 So if it's, I don't know, then it's lack of
11 personal knowledge. If it's, I only know because they said
12 this, it's hearsay. But raising the objection on either
13 grounds is under the case law sufficient for both.

14 THE COURT: Okay. Thank you.

15 MS. WOLTERING: Thank you.

16 THE COURT: I'll reserve decision on that one.

17 MS. FEIN: Good afternoon. I'm Amanda Fein, Baker
18 Hostetler on behalf of the trustee in connection with motion
19 in limine 3, and this is a narrow evidentiary question
20 whether Mr. Blecker's deposition testimony is admissible at
21 the parties upcoming evidentiary hearing.

22 We're sympathetic to Mr. Blecker. Our motion was
23 not intended to cause him any undue stress which is why the
24 week after we filed our motion we approached Mr. Blecker's
25 counsel with a limited factual stipulation regarding the

1 authenticity of these documents. If he would agree to his
2 documents' authenticity and agree that the -- or confirm
3 that the handwriting on those documents that he produced was
4 his own we agreed to withdraw the motion.

5 We didn't hear right after we provided that offer.
6 We reiterated the offer earlier this month and we were told
7 there would be no factual agreement. So we're looking at an
8 admissibility issue, whether his testimony is admissible in
9 this proceeding or not.

10 The party advancing the testimony bears the burden
11 of proving it's admissible. We do not agree that Mr.
12 Blecker's son's declaration de facto is proof of Mr.
13 Blecker's unavailability. That's something that --

14 THE COURT: He's 105 years old. What do you
15 expect?

16 MS. CHAITMAN: Six.

17 MS. FEIN: We -- certainly, the issue that he's
18 105 is very relevant to whether he's available or not --

19 THE COURT: You think?

20 MS. FEIN: -- available to testify. The way that
21 Rule 32 was crafted is the fact that -- the fact that
22 someone is a certain age I don't think they necessarily had
23 105 in mind to be honest. The fact that someone is a
24 certain age must be the reason they can't provide testimony.

25 THE COURT: Let's assume he's not available. What

1 next?

2 MS. FEIN: Okay. If you do decide that he's not
3 available, then it becomes a question of prejudice. Is the
4 trustee more prejudiced by the fact that his testimony is
5 entered and that testimony is unchallenged or --

6 THE COURT: Haven't we gone through this before,
7 though? You made a motion -- this is something I wanted to
8 ask you about I think in July or I heard it in July, that
9 you wanted to take his deposition. And so his deposition
10 was taken. The profit withdrawal issue was out there based
11 on an April, I guess, 1990 -- 2004 or 2014 declaration.
12 Whoever was there asked a couple of questions and reserved
13 their rights to continue the deposition of a 103 year old
14 man at that point.

15 It now appears from the motion that's been made
16 that after that deposition documents were turned over and
17 those documents contained handwritten notations which
18 indicated that in your view Mr. Blecker computed his returns
19 based upon the profit withdrawals. Why wasn't that raised
20 when you came back and wanted to take his deposition?

21 MS. FEIN: Are you -- you're speaking about the
22 July 2016 hearing?

23 THE COURT: Yeah. That was never raised before.

24 MS. FEIN: That's true. I --

25 THE COURT: Don't you think that's important,

1 though?

2 MS. FEIN: I do.

3 THE COURT: I don't understand. I --

4 MS. FEIN: So my understanding about that
5 production is that it was produced in connection with the
6 multi-claimants at that time because Mr. Blecker's
7 deposition was taken in connection with the inter-account
8 transfer litigation. That production was turned over in
9 2014 as a part of that litigation.

10 THE COURT: It was after his depo -- after his
11 deposition to reserve his testimony.

12 MS. FEIN: Yes. Yes.

13 THE COURT: And what I'm saying is when you came
14 back two years later and you wanted to take his deposition
15 nobody said, hey, you know, after we took his deposition the
16 last time he turned over these documents and they indicate
17 that he was treating the profit withdrawals as a return.

18 MS. FEIN: So I think that what had changed
19 between these two periods of time is that currently we
20 understand that -- or we would like to have -- we understand
21 that the Court's amenable to having the claim determined as
22 in connection in part of the omnibus proceeding.

23 THE COURT: You've got evidence -- but you got
24 this evidence he's 105. What were you waiting for?

25 MS. FEIN: I think, you know, because the

1 proceeding did change over time and we did -- initially we
2 did think this was going to be heard on the papers. We
3 understood it was going to encompass testimony after that
4 point. And at that point we did --

5 THE COURT: But that was -- how long ago did we
6 start down this road of additional depositions of Madoff --

7 MS. FEIN: So --

8 THE COURT: -- and other people.

9 MS. FEIN: -- the depositions --

10 THE COURT: This is going on for two years.

11 MS. FEIN: The depositions were first raised last
12 year, February 2016. We deposed the Blums in May of 2016
13 and that's when we requested Mr. Blecker's testimony. So --

14 THE COURT: I understand you requested his
15 testimony, but when you requested his testimony you never
16 said -- and the only issue with Mr. Blecker frankly is
17 whether or not these PW notations or profit withdrawals are
18 actual disbursements. But you never said at that time when
19 you wanted to take his deposition a second time or renew it
20 or whatever that after the first deposition he turned over
21 these documents and they're important and we want to ask him
22 about them, and we didn't have the opportunity then to do it
23 because obviously he hadn't turned over the documents.

24 I'm asking --

25 MS. FEIN: Right.

1 THE COURT: -- why it wasn't raised at that time?

2 MS. FEIN: So --

3 THE COURT: And you're telling me -- you haven't
4 answered me.

5 MS. FEIN: Okay. At that hearing my understanding
6 was that it was about the omnibus proceeding and here's why
7 that mattered. You're right. It was important to me
8 anyway, why it was important to us. You mentioned that Mr.
9 Blecker's testimony wasn't relevant to the omnibus
10 proceeding and should he have relevant information related
11 to his claim we would be entitled to take that testimony in
12 connection with his claim. But because it was an omnibus
13 proceeding and because we were deposing the employees Mr.
14 Blecker's testimony about his own individual claim wasn't
15 relevant. And that was my understanding of how that hearing
16 --

17 THE COURT: So you want to take the testimony --

18 MS. FEIN: -- transpired.

19 THE COURT: -- now with respect to his individual
20 claim, not the omnibus proceeding?

21 MS. FEIN: That's correct. We don't believe -- we
22 agree with you that his testimony isn't relevant to the
23 omnibus proceeding and we actually narrowed it to three
24 topics because we don't think that it's necessarily, you
25 know, in anyone's best interest to have a long deposition of

1 him. There are three things that we think are open, live,
2 factual issues that we would like to address.

3 THE COURT: What's that?

4 MS. FEIN: The fact that his account balances were
5 flat over time. It's his testimony that profits accumulated
6 in his accounts, but for the periods of the profit
7 withdrawals, which were from 1981 on one account, 1986 on
8 another account all the way through 1997 his account
9 balances remained flat. So we want to ask him about that.

10 The second thing is explaining the handwritten
11 notes, confirming that the handwriting is his, if it is his
12 and what they intend to show. That's something that really
13 -- Mr. Blecker can provide and we could get in a stipulation
14 if anyone would agree to stipulate to us. But otherwise
15 it's going to be difficult to understand that. And we can
16 certainly try to prove that. But he's really the best
17 source of that information.

18 And the last item is just his sources of income
19 and banking practices in the 1980s and 1990s.

20 THE COURT: Why do you have to ask him about that?

21 MS. FEIN: That's really an issue of -- that's the
22 period that he was receiving the profit withdrawal
23 transactions. We don't have an understanding of -- at the
24 time he was in his 70s and 80s. We don't know what his
25 other sources of income were. We don't know who else was

1 working with his bank accounts, who had access to them, who
2 else could have deposited checks. Those are just issues
3 that we don't have any understanding about.

4 THE COURT: So you want to ask him if somebody
5 else deposited checks that he got?

6 MS. FEIN: I think we're interested to know
7 whether there were other people that also used his same bank
8 accounts, for example, his wife that could have potentially
9 deposited checks. I think it's an issue because the records
10 don't seem to match up with Mr. Blecker's testimony and
11 that's one way of --

12 THE COURT: Oh, I've raised that before, but I --
13 let me hear from Ms. Chaitman.

14 What's that?

15 MS. FEIN: This is a chart. It just -- it shows
16 the (indiscernible) account balance if you would like to
17 take a look at it --

18 THE COURT: I know. I've seen it --

19 MS. FEIN: -- you can turn it over --

20 THE COURT: I've seen the account balance.

21 MS. FEIN: Okay. Understood. Thank you.

22 MS. CHAITMAN: Your Honor, I had made a motion for
23 summary judgment in the spring of 2014 on Mr. Blecker's
24 claim on the profit withdrawal issue. That's what it was.
25 It wasn't an inter-account issue. It was the profit

1 withdrawal --

2 THE COURT: No. I remember.

3 MS. CHAITMAN: -- issue. You denied the motion
4 because you found there were factual issues and you
5 suggested that Mr. Blecker's deposition be taken to preserve
6 his testimony. His deposition was taken on July 1st, 2014.
7 The trustee attended and asked very few questions. Then the
8 trustee wrote to me and said, we would like to continue Mr.
9 Blecker's deposition, and I said fine and we set the date
10 for August 7th.

11 And then for whatever reason the trustee wrote to
12 me and said they didn't want to take his deposition.

13 THE COURT: But now they do so what -- why
14 shouldn't they do it then?

15 MS. CHAITMAN: Well, let me just --

16 THE COURT: Why were you willing to let them do it
17 then and not now?

18 MS. CHAITMAN: I can explain that. In September I
19 produced the documents. September 2014 I produced the
20 documents that they're now claiming are the reason they need
21 to take his deposition. He was 103 years old then. He's
22 106 years old now. He's deteriorated. He's not -- he --
23 you're going to ask a 106 year old man what he did in 1980?
24 I mean, why isn't the trustee bound by their rules of civil
25 procedure and why aren't they held to a standard or

1 reasonable diligence, particularly when they're dealing with
2 a customer to whom they owe a fiduciary duty who was 103
3 years old in 2014.

4 THE COURT: I'm not sure they owe a fiduciary duty
5 to individual customers. If they did they could never
6 object to their claims or sue them. It's like a trustee.
7 They owe a fiduciary duty to the estate, not to individuals.

8 MS. CHAITMAN: Okay. The point is that they owe
9 him at least a duty of courtesy. The man was 103 years old.
10 They made a deliberate decision having received these
11 records and the issue was profit withdrawals. It was never
12 inter-account transfers. It was profit withdrawals.

13 THE COURT: The only issue I have is with these
14 documents that were subsequently produced.

15 MS. CHAITMAN: In September 2014.

16 THE COURT: Right. Okay. And you -- and at that
17 point you were willing to let -- to continue the deposition.
18 They said they didn't want to and my question is well, now
19 they want to so why not?

20 MS. CHAITMAN: Because I -- my -- I'm terribly
21 prejudiced at this point. I have a man who is no longer
22 mentally competent to respond to questions.

23 THE COURT: Well --

24 MS. CHAITMAN: So, I mean, how can you take
25 advantage of someone who is that elderly.

1 THE COURT: I appreciate that he's elderly.
2 Believe me. But I don't know whether he's mentally
3 competent or not. He --

4 MS. CHAITMAN: I can --

5 THE COURT: -- he was --

6 MS. CHAITMAN: I will give you a doctor's
7 affidavit.

8 THE COURT: But won't that show up in the
9 deposition that he would just be confused and, you know --

10 MS. CHAITMAN: You know, Judge, I want to -- I
11 want to explain something to you. I will not take the
12 responsibility that this man will have a stroke because of
13 the stress. I -- you know, that's just -- to me it's
14 unconscionable. If the trustee -- the trustee has a team of
15 lawyers. They have to take responsibility for their own
16 conduct. They have an army of people who could have
17 reviewed these documents in 2014 and asked for his
18 deposition then. I would have said yes as Your Honor
19 understands. I cannot say yes now. I cannot put him
20 through that. I'm not going to take responsibility for him
21 dying because the trustee waited three and a half --

22 THE COURT: Do you have the documents --

23 MS. CHAITMAN: -- years.

24 THE COURT: -- with the handwritten notations?

25 MS. CHAITMAN: Huh?

1 THE COURT: Do you have the documents with the
2 handwritten notations?

3 MS. FEIN: Yeah. Yes.

4 (Pause)

5 MS. FEIN: We have -- permission to approach?

6 (Pause)

7 MS. CHAITMAN: You know, Judge, I just want to say
8 something. I have to check because I'm not sure these were
9 -- under the pretrial order the trustee had to designate
10 exhibits by a certain date and the trustee then supplemented
11 that without a court order. And I would oppose admission of
12 any documents that were not included in the exhibit list at
13 the time it was required to be served. I don't know if
14 these are within that category.

15 MS. FEIN: No. These are (indiscernible).

16 THE COURT: I --

17 MS. FEIN: (Indiscernible).

18 (Pause)

19 THE COURT: Where does it say that a transaction
20 is a PW transaction on this?

21 MS. FEIN: PW transaction --

22 THE COURT: Oh, I see.

23 MS. FEIN: -- (indiscernible).

24 THE COURT: Is this the form in which they were
25 turned over by Mr. Blecker or Mr. Blecker's --

1 MS. FEIN: That's correct. And some of these
2 documents not from the relevant time period, but some
3 statements from 2007 have identical handwritten notes that
4 were in connection with Mr. Blecker's customer claim in
5 February 2009 and are on Ms. Chaitman's pretrial exhibit
6 list as well in connection with that claim.

7 THE COURT: Well, you know, if this is the way
8 they were turned over I will receive them in evidence and
9 the two of you can argue about what they mean. I'll give
10 you the option to have Mr. Blecker testify. I realize he's
11 106.

12 MS. CHAITMAN: He can't testify.

13 THE COURT: Well --

14 MS. CHAITMAN: His son can testify if that's --

15 THE COURT: Well, can his son testify about the
16 handwritten notations?

17 MS. CHAITMAN: Possibly. I would have to ask him.

18 THE COURT: Okay. All I'm saying is if that's the
19 way they turned over, I'll receive them and you can talk
20 about what they mean.

21 And I'll reiterate that I had a problem with Mr.
22 Blecker's testimony because he testified that, you know, he
23 never took a withdrawal from that account. The money was on
24 deposit for something like 15 years. I don't remember the
25 time. And then he pulled out \$206,000 at the time.

1 MS. CHAITMAN: Here's the thing, Your Honor --

2 THE COURT: I just -- I just want you to know
3 that.

4 MS. CHAITMAN: No. No. No.

5 THE COURT: And I've said it before.

6 MS. CHAITMAN: I know. I understand that. But
7 you have to appreciate that when the trustee filed their
8 papers in this case -- on these motions they did not
9 disclose that Mr. -- they represented in their papers that
10 Blecker opened an account in 1986. In fact, now they've
11 conceded that he opened an account in 1981. And they've
12 never produced a full set of the documents for that account.
13 So there's a mystery as to what happened with that account
14 that was started in 1981. The trustee, I assume, doesn't
15 have the records. I only got four or five statements in a
16 mass of documents.

17 So we don't have complete records. And I think
18 it's unfair to draw a conclusion for -- about what Mr.
19 Blecker is saying --

20 THE COURT: Well --

21 MS. CHAITMAN: -- because let me just say this,
22 Your Honor.

23 THE COURT: Go ahead. All I'm saying is --

24 MS. CHAITMAN: Imagine if --

25 THE COURT: -- if that's all the testimony that

1 I'm going to hear on this or see on this, I raised this
2 issue before. We're talking about a single account,
3 \$200,000 was deposited over a period of years. He said
4 that. He never withdrew anything because it was such a good
5 investment and at the end of the day he withdrew \$206,000.
6 It just doesn't quite jive.

7 MS. CHAITMAN: But the -- in the entire -- we
8 don't know what transfers were made to this other account
9 which the trustee had never produced documents on except for
10 four statements.

11 THE COURT: This other account being some account
12 other than the \$200,000 account?

13 MS. CHAITMAN: Yes. He had a separate account.

14 THE COURT: Well, does the \$200,000 account
15 reflect any transfers to that account?

16 MS. CHAITMAN: In the statements that I have no,
17 but I don't know. We -- how do you reconstruct something
18 from 1981? The fact is the trustee has not produced a
19 complete set of the records --

20 THE COURT: But --

21 MS. CHAITMAN: -- for that account.

22 THE COURT: -- I thought he opened the account we
23 were discussing in 1986.

24 MS. CHAITMAN: He had a joint account in 1981.

25 THE COURT: Right.

1 MS. CHAITMAN: He opened a new joint account that
2 wasn't a transfer into from the other account.

3 THE COURT: Was that the \$200,000?

4 MS. CHAITMAN: Right. And the -- he's -- the
5 trustee has never produced, I assume the trustee doesn't
6 have them, the records showing what happened with that other
7 account. So we're dealing with events that occurred 20, you
8 know, seven years ago and the trustee doesn't have a
9 complete record.

10 And, you know, interestingly enough, Judge, other
11 than the PWs that the trustee is claiming for which there's
12 no documentary evidence, not a shred of evidence and Collura
13 admits this, Blecker never took any withdrawals. The
14 trustee doesn't claim he took any withdrawals. The only
15 withdrawals that the trustee claims he took were profit
16 withdrawals. And that's -- this man has always taken the
17 position long before I even knew him that he never took
18 money out of this account.

19 THE COURT: I know that's his position.

20 All right. As I said, I'll -- you know, if he
21 can't testify then I'll just receive those documents in the
22 manner in which they were produced and you can argue over
23 what they mean.

24 MS. CHAITMAN: And I will speak to his son and see
25 if his son has any personal knowledge.

1 THE COURT: Is he on the witness list?

2 MS. CHAITMAN: No, he's not, but I'm producing him
3 in lieu of --

4 THE COURT: And by the way, I don't know if this
5 -- and I raised this the last time, this doesn't really
6 relate to the omnibus proceeding so much as it relates to
7 his individual proceeding.

8 As I said all that will come out of the omnibus
9 proceeding is I will or will not accept an inference that,
10 you know, the PW means what it says subject to hearing from
11 individual customers in other cases.

12 MS. CHAITMAN: We've actually done that already
13 because we went through an opt-out procedure where all --
14 the only people who were before you on this issue are the
15 people who've said we didn't take out withdrawals. So --

16 THE COURT: Well, if you want me to try -- the
17 trustee has offered to try this case right after your --
18 right after the -- or as part of this proceeding.

19 MS. CHAITMAN: Yes. And that's what I --

20 THE COURT: You want to do that?

21 MS. CHAITMAN: Yes.

22 THE COURT: Okay.

23 MS. CHAITMAN: Yes.

24 THE COURT: So we'll do Blecker, but not the Blums
25 as part of this proceeding.

1 MS. CHAITMAN: Okay. And what I would suggest,
2 Your Honor, is I will talk to Mr. Blecker's son and if he
3 has personal knowledge of this then I'll offer his
4 deposition --

5 THE COURT: Well, they'll --

6 MS. CHAITMAN: -- to the trustee.

7 THE COURT: Okay.

8 MS. CHAITMAN: Okay.

9 THE COURT: As long as they have an opportunity to
10 depose him.

11 MS. CHAITMAN: I beg your pardon.

12 THE COURT: As long as they have an opportunity to
13 depose him.

14 MS. CHAITMAN: Yes. Yes.

15 THE COURT: All right. So with respect to your
16 motion -- this motion I've resolved it. I'm just saying
17 that I'll take the documents. You know, you're arguing
18 whether he's unavailable. If you want to put in evidence
19 upon availability, fine, but he is 106 years old.

20 MS. CHAITMAN: I can get a doctor's letter if you
21 want that, Your Honor.

22 THE COURT: All right.

23 MS. FEIN: One item.

24 THE COURT: Oh, take your documents back.

25 MS. FEIN: Okay. Certainly.

1 We would be happy to accept a doctor's note. That
2 hasn't been put forward yet. But we did have -- we included
3 a document that was an article that he was featured in about
4 his potential (indiscernible). He's been --

5 THE COURT: So if it's in the press it must be
6 true.

7 (Laughter)

8 MS. FEIN: I certainly wouldn't ascribe to that
9 philosophy.

10 THE COURT: Last time I said that I got in a
11 little trouble.

12 MS. FEIN: He was interviewed again in an article
13 published in 2017. He said he enjoyed very good health. I
14 certainly wouldn't hold that against him. I mean, he's
15 fortunate that hopefully he's in that position that he
16 doesn't take any medications, except baby aspirin and he was
17 making doctor's appointments 4/20/17. So that informed, you
18 know, our basis for moving forward with this. It was not
19 intended to harass Mr. Blecker.

20 THE COURT: But you said you would accept a
21 doctor's note?

22 MS. FEIN: Depending on the context of the note
23 and depending on what it said, that was part of our
24 stipulation.

25 THE COURT: Well, why don't we deal with this

1 issue at trial? Take your documents back, though.

2 Okay. Last, this is the motion to exclude the
3 trustee as a witness.

4 MS. VANDERWAL: Good afternoon again, Your Honor.
5 Amy Vanderwal for the trustee.

6 We have reached the final motion of today. The
7 participating claimants represented by Chaitman, LLP
8 indicated in pretrial disclosures that they intend to call
9 the trustee as a witness at trial.

10 Your Honor, this Court should exclude such
11 testimony because it is cumulative and duplicative of
12 testimony that will be offered by the experts. It should be
13 excluded under Federal Rule of Evidence 403.

14 To the extent it's not cumulative it is -- the
15 trustee's personal knowledge relates to his legal position
16 which is either privileged or as has already been made
17 available to this Court in our papers. And finally the
18 request for such testimony is from the face of Mr. Blecker
19 it was intended to harass the trustee.

20 THE COURT: Is the trustee going to testify at
21 trial?

22 MS. VANDERWAL: No. Well, our -- we do not
23 identify him as a witness. We do not believe he has
24 personal knowledge regarding the omnibus issue regarding --
25 that he could provide testimony on.

1 THE COURT: I thought the trustee was going to
2 testify about the books and records he inherited and what he
3 did.

4 MS. VANDERWAL: The experts are going to testify
5 as to the contents of the books and records, their analysis,
6 and then another representative of the forensic accountants
7 will testify as to the chain of custody. They -- the
8 forensic accountants and claims agents were involved in the
9 case from the first day. So they were there and they'll
10 testify to the preservation of the records, the maintenance
11 of the records.

12 THE COURT: Okay.

13 MS. VANDERWAL: And then the analysis and
14 reconstruction of the books and records. And it's that
15 analysis and reconstruction that forms the basis for both
16 the decision to treat profit withdrawals as evidence and the
17 specific claims determinations, the -- it's the same math
18 obviously.

19 So the experts in this case will provide the best
20 testimony particularly in this case where as we've mentioned
21 the fight went on for 40 years. The records are voluminous.
22 They've spent daily, they've spent years analyzing these
23 books and records and they will present that to Your Honor
24 as the basis for the decisions that have been made in terms
25 of claims.

1 As I mentioned, to the extent that the trustee has
2 knowledge not derived from his experts that knowledge
3 relates to his legal positions. So in terms of his
4 communications with counsel that would be privileged. In
5 terms of positions on the legal issues in this proceeding
6 that's been presented to the board.

7 And finally I -- and importantly I would just like
8 to note that the participating claimants shouldn't -- on the
9 face of their papers it suggests that their motivation in
10 attempting to examine the trustee is harassment. There are
11 baseless statements in those papers that have been repeated
12 throughout this proceeding. For example, that the trustee
13 is slowly acting to enrich SIPA or that the trustee is
14 motivated to increase his fees. They are irrelevant to
15 these proceedings, harassing and the -- his testimony should
16 not be permitted for that reason as well.

17 Okay. Thank you.

18 MS. VANDERWAL: Thank you, Your Honor.

19 MS. CHAITMAN: Your Honor, the trustee made the
20 determination to disallow all profit withdrawals regardless
21 of whether there were any internal records as existed with
22 many, many of the profit withdrawal customers.

23 The trustee made that decision in 2009, long
24 before he retained the experts --

25 THE COURT: But that's not what they say. They

1 say the experts were in there day one.

2 But let me get to the question I have. Suppose
3 the trustee didn't have any records at that time and he had
4 the motivations that you ascribe to. If he's still right
5 about the PW what difference does it make?

6 MS. CHAITMAN: Well, the -- first of all, I'm
7 convinced that he's wrong about the PW.

8 THE COURT: Okay. That I understand --

9 MS. CHAITMAN: And --

10 THE COURT: -- but that's really the issue.

11 MS. CHAITMAN: And -- but the point is, he has an
12 obligation as the trustee to examine the books and records
13 and make a reasonable determination. And the question that
14 I would like to clarify through his testimony is that he
15 actually had no basis whatsoever for charging customers with
16 profit withdrawals where there was no request for them, from
17 them. There was nothing in the file as there were in
18 hundreds of the files. There were no check stubs showing
19 that they had gotten checks. There was nothing in Mr.
20 Blecker's file. And --

21 THE COURT: But assuming that he had no basis, if
22 he now has a basis and he's right what difference does it
23 make as a legal matter? That's what I'm asking. Why is it
24 -- in other words, why is it relevant or material?

25 MS. CHAITMAN: Well, first of all, you're assuming

1 that he has a basis now and I --

2 THE COURT: But that's what I'm going to decide.

3 MS. CHAITMAN: Right.

4 THE COURT: In other words I'm saying what do I
5 care what is motivation is. He's either right or he's
6 wrong.

7 MS. CHAITMAN: Well, if you were to determine that
8 he didn't have a proper motivation I think that there were
9 other remedies that would be available. I mean, after all
10 it's cost Mr. Blecker as one example a fortune to try to
11 achieve the result that he believes he is entitled to and
12 that I believe he is entitled to. And I think the Court
13 would have the discretion to deal with that expense --

14 THE COURT: Now you're saying he should be
15 sanctioned for some sort of bad faith, but there's no
16 evidence --

17 MS. CHAITMAN: Well --

18 THE COURT: -- of bad faith.

19 MS. CHAITMAN: Well, we haven't cross-examined him
20 yet.

21 THE COURT: So you're going to go fish for some
22 bad faith?

23 MS. CHAITMAN: Whether he had a basis for the
24 determination that he made, whether you decide -- whether
25 you say he didn't have a basis or you say that he did --

1 made a determination in bad faith, that's for you to
2 determine. But I think I can establish that he had no
3 legitimate basis to make that determination.

4 THE COURT: And I come back to the same question
5 in terms of the PW proceeding why does it matter if he now
6 has a basis?

7 MS. CHAITMAN: I think it matters because although
8 the law generally does not permit the payment of interest to
9 customers whose claims are allowed after a tortuous
10 litigation process, if the Court finds that the trustee made
11 this decision in bad faith without any factual basis I think
12 this would be ripe for a determination that Mr. Blecker
13 should not be penalized for the loss of his money from 2009
14 on.

15 THE COURT: Okay. Anything else?

16 MS. VANDERWAL: The only thing I want to say, Your
17 Honor, is that the only records that counsel for Mr. Blecker
18 made that actually relates to the scope of these proceedings
19 is letters in customer files. And two things.

20 The testimony that you'll hear from employees who
21 worked at BLMIS during relevant period and worked daily with
22 those files will show that written authorization was not
23 required for profit withdrawal transactions. You would set
24 up your account. You would say whether you wanted profits
25 or not, and then if you needed to change your accounts from

1 a send to a reinvest for example, then you would send in the
2 letter.

3 THE COURT: Are you suggesting that Ms. Chaitman
4 should be able to question the trustee on what he knew in
5 2009?

6 MS. VANDERWAL: Well, no. That's the second part
7 of what I was getting to is the person who was -- who went
8 through and analyzed those customer files will testify. We
9 said Collura went through, looked at the customer files,
10 looked at what was in those files and how it related to the
11 -- to their status as a receiving profit withdrawals or not.
12 She will provide that testimony. She did that analysis.
13 You will hear about that from her.

14 THE COURT: What I understand Ms. Chaitman's
15 argument to be that no matter what the facts now show in
16 2009 when the trustee denied the claim based on profit
17 withdrawal or reduced the claim he had no basis to do that,
18 no reasonable basis.

19 And the question is whether that's relevant to the
20 proceeding.

21 MS. VANDERWAL: Well, it's not correct.

22 THE COURT: I understand. But let's assume for
23 the moment it is.

24 MS. VANDERWAL: So the books and records at the
25 time of the claims determination indicated that these were

1 profit withdrawal transactions. Subsequent to that time at
2 your -- at Your Honor's request we have done things like
3 take employee depositions that have confirmed that that
4 analysis that we did at the beginning that was based on the
5 books and records as it was required to be by SIPA was
6 accurate.

7 THE COURT: But are you saying that the basis of
8 the trustee's knowledge in 2009 is relevant to this
9 proceeding, the basis -- his knowledge for the basis of his
10 denying the claims in 2009?

11 MS. VANDERWAL: Well, it wasn't based on the
12 trustee's personal knowledge. That's what I'm saying. The
13 denial of the claims was based on the analysis completed by
14 the experts then --

15 THE COURT: Are you saying it's --

16 MS. VANDERWAL: -- who were there --

17 THE COURT: Are you saying it's relevant but if he
18 were asked the question he would say, I don't know, you
19 know, I listened to my experts.

20 MS. VANDERWAL: I think that the time at which he
21 determined the claim is relevant and I think that claims
22 determination was accurate on the books and records and
23 that's been confirmed. But he's not the person to testify
24 on that. The experts are because they --

25 THE COURT: Well, his testimony may be based on

1 what the experts told him. That's the position --

2 MS. VANDERWAL: Right. Well, that just means
3 that's cumulative and it should be excluded --

4 THE COURT: But how do we know that's what he's
5 going to say?

6 MS. VANDERWAL: Well, the other thing that they
7 could -- the claimants have available to them is their
8 determination letter which sets out the analysis that the
9 experts did. So they know what the -- what the basis was
10 because it was communicated to them.

11 THE COURT: Well, Ms. Chaitman's raising a
12 different issue. She's saying these claimants were denied
13 in bad faith even if he's right now, although she disagrees
14 that he's right. Even if he's right now he had no basis to
15 disallow the claim in 2009. You seem to be saying, well, in
16 2009 he had information, but then it sounds like it's
17 relevant and that's what I don't understand.

18 I would have thought that his subjective
19 motivation is irrelevant --

20 MS. VANDERWAL: His perspective --

21 THE COURT: -- but you're telling me it is
22 relevant.

23 MS. VANDERWAL: No. That's not what I'm telling
24 you, Your Honor.

25 THE COURT: Well, that's why I'm asking you.

1 MS. VANDERWAL: His subjective motivation is
2 irrelevant to these proceedings. It's an objective standard
3 of the claims determination.

4 THE COURT: All right. I'll reserve decision on
5 this.

6 Thank you.

7 (Proceedings concluded at 3:47 p.m.)
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

R U L I N G S

IDENTIFICATION

PAGE

Trustee's Motion in Limine Excluding Certain

Testimony from the Blums

--

Trustee's Motion in Limine Excluding Testimony

of Aaron Blecker

--

Trustee's Motion in Limine Excluding Himself

as Witness

--

Participating Claimants' Motions in Limine

Precluding Experts Greenblatt and Collura

--

CERTIFICATE

I, Sherri L. Breach, certify that the foregoing
transcript is a true and accurate record of the proceedings.

**Sherri L.
Breach**

Digitally signed by Sherri L.
Breach
DN: cn=Sherri L. Breach,
o=Veritext, ou,
email=digital@veritext.com, c=US
Date: 2017.04.19 16:12:30 -04'00'

Sherri L. Breach

AAERT Certified Electronic Reporter & Transcriber CERT*D-397

DATE: April 18, 2017

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501